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October 6, 2008

VIA ELECTRONIC FILING

Hon. Anna K. Quinlan, Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

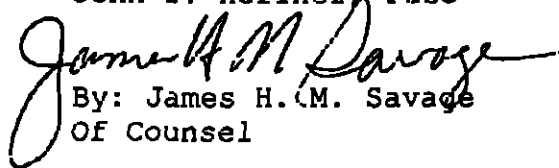
RE: STB Docket No. AB-1020X  
East Penn Railroad, LLC-Abandonment Exemption-In Berks  
and Montgomery Counties, Pennsylvania

Dear Ms. Quinlan:

On behalf of Berks County, we submitting for filing a response to East Penn Railroad, LLC's motion for leave to file a response to the County's Protest in this matter.

We thank the Board for its time and consideration.

Sincerely yours,  
John D. Heffner, PLLC

  
By: James H. M. Savage  
Of Counsel

JHS/mhd

Enc.

cc: Karl Morell, Esq. (w/enc.)  
Laurel Frankston Grass (w/enc.)

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. AB-1020-0-X**

**EAST PENN RAILROAD, LLC  
-ABANDONMENT EXEMPTION-  
IN BERKS AND MONTGOMERY COUNTIES, PA**

**BERKS COUNTY'S RESPONSE TO ESPN'S MOTION FOR LEAVE  
TO FILE RESPONSE TO PROTEST**

Submitted By:

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Tel. (202) 296-3335

Attorneys for Protestant  
Berks County, PA

Dated: October 7, 2008

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. AB-1020-0-X**

**EAST PENN RAILROAD, LLC**

**-ABANDONMENT EXEMPTION-**

**IN BERKS AND MONTGOMERY COUNTIES, PA**

**BERKS COUNTY'S RESPONSE TO ESPN'S MOTION FOR LEAVE  
TO FILE RESPONSE TO PROTEST**

**PROCEDURAL HISTORY**

By Decision served August 20, 2008, the Board provided notice of the filing of an unverified Petition for Exemption by East Penn Railroad, LLC ("ESPN"), seeking permission to abandon a line of railroad (the Colebrookdale Branch or simply "The Branch") extending from MP 0.0 in Pottstown, Montgomery County to MP 8.6 in Boyertown, Berks County, all in the Commonwealth of Pennsylvania. The Decision set September 9, 2008, as the due date for

submitting protests. On September 9th Berks County ("Berks" or "the County") filed a timely protest of the proposed abandonment.

On September 26, 2008 ESPN filed a motion for leave to file a response to the protest as well as its response to the protest. Berks now responds to ESPN's motion, and reserves the right to file a timely motion to strike.

#### LEGAL ARGUMENT

##### POINT I

#### PETITIONER'S BELATED ATTEMPT TO SUPPLEMENT THE RECORD FAILS TO SATISFY THE BOARD'S REQUIREMENTS AND THE PETITION SHOULD BE DISMISSED

This proceeding is subject to a deadline established by Congress. The Board has 110 days from the date of filing of a petition or application for abandonment to issue a decision on the merits. See. Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311, 313 (1997), aff'd, Nat'l Ass'n of Reversionary Prop. Owners v. STB, 158 F.3d 135 (D.C. Cir. 1998); 49 CFR 1152.27(b)(2). Congress has made clear that carriers that believe they are burdened by unprofitable lines should be able to seek their abandonment promptly. The 110-day deadline challenges parties protesting

abandonments to prepare and submit their evidence and arguments soon after the petition or application is filed. Equity demands that the same deadlines apply to the carriers.

The Board has rejected attempts by carriers to rehabilitate inadequate presentations and have denied the sought abandonments in those cases, thus requiring the carriers to submit new filings that can be adjudicated in 110 days. See, The Cincinnati, New Orleans and Texas Pacific Railway Company-Abandonment Exemption-In Roane County, TN, STB Docket No. AB-290 (Sub-No.236X) (STB served Dec. 2, 2005) ("CNOTP"); San Pedro Operating Company, LLC-Abandonment Exemption in Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 4X), slip op. at 5 (STB served Sept. 15, 2005); and Boston and Maine Corporation-Abandonment Exemption-In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X) et al., slip op. at 5-6 (STB served Dec. 31, 1996). Since the carrier controls the presentation of its case, the Board expects that submissions to be sufficient to permit the Board to decide the petition or application within 110 days. See, CNOTP, supra.

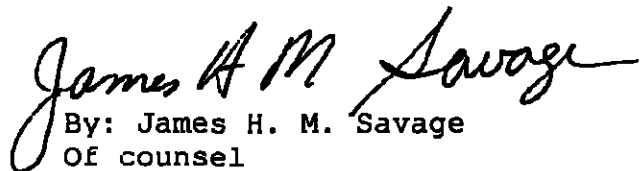
The Board's Rules do not confer a right of response to protests of abandonment exemption petitions.

#### CONCLUSION

For the above stated reasons and based upon the above cited points and authorities, Protestant Berks County requests the Board deny Petitioner ESPN's motion for leave to file a response to the protest.

Respectfully submitted,

John D. Heffner, PLLC  
1750 K Street, N.W.-Suite 200  
Washington, D.C. 20006  
(202) 296-3335


  
By: James H. M. Savage  
Of counsel

Attorneys for Protestant  
Berks County, PA

Dated: October 7, 2008

CERTIFICATION OF PROOF OF SERVICE

I certify that I served this day by electronic mail on counsel for Petitioner, and by first class mail upon counsel for Montgomery County a true copy of the within pleading.

  
James H. M. Savage

Dated: October 7, 2008